

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JOSEPH AUGUST MARSALA,

Plaintiff,

v.

DIAZ, *et al.*,

Defendants.

Case No. 1:22-cv-00843-BAM (PC)

ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL

(ECF No. 3)

Plaintiff Joseph August Marsala (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff’s motion for appointment of counsel, filed July 11, 2022. (ECF No. 3.) Plaintiff requests appointment of counsel because he cannot afford counsel, he works during available library hours at his institution, he can only keep track of the rancid dinner trays given to himself, he has been unable to find help after writing to other lawyers, he cannot cross examine or collect evidence, he has been harassed, ridiculed, and retaliated against when interacting with staff, and without a lawyer his rations will continue to be rancid. (*Id.*)

Plaintiff is informed that he does not have a constitutional right to appointed counsel in this action, *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev’d in part on other grounds*, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). *Mallard v. U.S. Dist. Court for the S. Dist.*

1 of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may
2 request the voluntary assistance of counsel pursuant to section 1915(e)(1). *Rand*, 113 F.3d at
3 1525.

4 Without a reasonable method of securing and compensating counsel, the Court will seek
5 volunteer counsel only in the most serious and exceptional cases. In determining whether
6 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on
7 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
8 complexity of the legal issues involved.” *Id.* (internal quotation marks and citations omitted).

9 The Court has considered Plaintiff’s request, but does not find the required exceptional
10 circumstances. Even if it is assumed that Plaintiff has made serious allegations which, if proved,
11 would entitle him to relief, his case is not exceptional. This Court is faced with similar cases filed
12 almost daily by prisoners who must obtain discovery and conduct legal research with limited
13 access to a prison law library. These plaintiffs also must litigate their cases without the assistance
14 of counsel.

15 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
16 Plaintiff is likely to succeed on the merits. Plaintiff’s complaint has not yet been screened, and
17 therefore the Court cannot evaluate the likelihood of success on the merits. Finally, based on a
18 review of the record in this case, the Court does not find that Plaintiff cannot adequately articulate
19 his claims.

20 Accordingly, Plaintiff’s motion to appoint counsel, (ECF No. 3), is HEREBY DENIED,
21 without prejudice.

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23 IT IS SO ORDERED.

24 Dated: July 19, 2022

/s/ Barbara A. McAuliffe
25 UNITED STATES MAGISTRATE JUDGE
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